

10 MOTION TO REVOKE
11 Before the Honorable Kathleen Cardone

13 A P P E A R A N C E S:

14 FOR THE GOVERNMENT:

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FOR DEFENDANT:

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25 computer-aided transcription.

1 MR. APPLEGATE: The court is back in session. The
2 Court calls the case of EP:16-CR-2036, the United States of
3 America versus April Cadena. Please raise your right hand.

4 Do you solemnly swear the testimony you are about to give
5 will be the truth, the whole truth, and nothing but the truth
6 so help you God?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Announcements.

9 MS. WINTERS: Good afternoon, Your Honor.
10 Michelle Winters for the United States.

11 MR. BENJAMIN: Good afternoon, Your Honor.
12 Brock Benjamin on behalf of Ms. Cadena, ready.

13 THE COURT: You are April Cadena?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Ms. Cadena, you are here this afternoon
16 having been on a motion to revoke. It is alleged you violated
17 certain terms and conditions of supervision.

18 Violation No. 1; you were ordered not to commit another
19 federal, state, or local crime. The nature of noncompliance
20 alleged is that according to El Paso County
21 Sheriff's Department, on April 2nd, 2020, deputies on patrol
22 observed a vehicle with a traffic violation. A traffic stop
23 was conducted.

24 Upon questioning the driver, she was identified as you,
25 April Cadena, and the passenger was identified as

1 Maria Suhay Chavez.

2 You agreed to a search of the vehicle. The search of the
3 vehicle led to the discovery of a purse containing a plastic
4 bag containing cocaine. You and Chavez were released pending
5 further investigation.

6 The indictment was filed on August 26th, 2020, in
7 Cause No. 2020-ODO-4440. You were charged with possession of a
8 controlled substance. At the time of the writing, an active
9 warrant had been issued, and you had not been arrested for that
10 incident by that date.

11 Violation Number 2; if you were arrested, or questioned, by
12 law enforcement that you were to notify your probation officer
13 within 72 hours. The nature of noncompliance alleged is that
14 on April 2nd, 2020, you were questioned by law enforcement and
15 failed to notify your probation officer within 72 hours of
16 being questioned.

17 Do you understand those allegations?

18 THE DEFENDANT: Yes, ma'am, I do.

19 THE COURT: The guideline range for that is 12 to 18
20 months of incarceration and up to three years of supervision.

21 Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you agree with that range,
24 Mr. Benjamin?

25 MR. BENJAMIN: Your Honor, the Court said 6 to 12 for

1 that range?

2 THE COURT: 12 to 18.

3 MR. BENJAMIN: For Violation 1?

4 THE COURT: Correct.

5 MR. BENJAMIN: Yes, for Violation 1, Your Honor.

6 MS. WINTERS: If I could jump in, we are abandoning
7 Violation No. 1 [inaudible] still pending.

8 THE COURT: Sorry, she is going to plead to
9 Violation No. 2. Is that what I am to understand?

10 MS. WINTERS: Yes, Your Honor.

11 THE COURT: Then for Violation No. 2, it is a Class C
12 violation, 6 to 12 months and two years of supervision.

13 Do you agree, Mr. Benjamin?

14 MR. BENJAMIN: I do, Your Honor.

15 THE COURT: Does the Government?

16 MS. WINTERS: Yes, Your Honor.

17 THE COURT: Knowing all of that, and you heard me go
18 over both Violation 1 and 2, knowing all of that, Ms. Cadena,
19 how did you wish to plead to Violation No. 2?

20 THE DEFENDANT: I understand that I did violate my
21 supervised release by not reporting. It is, for my
22 understanding, that I had to get arrested to report within 72
23 hours to my PO. That's why I didn't report. I thought I had
24 to get arrested to report.

25 THE COURT: Before you explain everything, did you

1 want to plead true or not true?

2 THE DEFENDANT: It is true.

3 THE COURT: Let me have your attorney, Mr. Benjamin,
4 speak, and I will let you explain if you want.

5 THE DEFENDANT: Yes, ma'am, sorry.

6 THE COURT: That's fine. I want to make sure that I
7 was clear that you still wanted to plead true.

8 Whenever you are ready, Mr. Benjamin.

9 MR. BENJAMIN: Thank you, Your Honor.

10 I remember Ms. Cadena very vividly from when I represented
11 her the first time in an alien smuggling case in 2016.

12 When I first talked to her this time, and when I talked to
13 her yesterday, we covered the same thing again. Ms. Cadena, do
14 you understand you were supposed to contact your probation
15 officer when questioned? I told her, and Ms. Cadena said I
16 told her as soon as I was in custody that I called her and told
17 her when I was in jail. Your Honor, we went round and round
18 about the fact that she was in jail in December. She was not
19 in jail in April.

20 So, Ms. Cadena, as the Court noted, pled true. I don't
21 think this is one of those things that I don't believe that
22 Ms. Cadena is going to say she didn't violate the law, or
23 wasn't violating her conditions, or anything else, but
24 Ms. Cadena was a very unique individual when I represented her
25 in 2016.

1 In discussing things with her four years later, things
2 don't have seemed to have changed a lot. She fully admits what
3 she did is a violation of the conditions of supervised release,
4 Your Honor. So, I think it is best probably for her to address
5 the Court.

6 THE COURT: What did you want to tell me about all of
7 that? Ms. Cadena, what did you want to tell me?

8 THE DEFENDANT: Yes, ma'am. Like I told [inaudible] I
9 understand I violated my probation, and it is just that I --
10 from my understanding, I thought I had to report when I got
11 arrested. Since at that time I didn't get arrested, it is why
12 I didn't say anything.

13 I am really sorry. This is my first violation. I always
14 complied with everything, and I never came up dirty or nothing.
15 I worked until the pandemic came on. I got back the custody of
16 my kids and everything, and Ms. Marisela, my probation officer,
17 can tell you that.

18 If you give me another opportunity -- I don't know what
19 else to say. I understand, and I plead true to what happened,
20 but I just didn't fully understand I had to report. Just by
21 getting --

22 THE COURT: Question or contact with the police?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Go ahead.

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Did you want to finish?

2 THE DEFENDANT: I just want to ask for [inaudible] I
3 am telling you it was my first violation in the three years
4 they gave me on supervised release. I complied with everything
5 as I told you right now. It is just that this incident that
6 happened --

7 THE COURT: Let me ask you a question, Ms. Cadena.

8 Are you 30 years old now?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: You are 30 years old. When I look at,
11 and, as you know, you were in front of me back in 2017. It has
12 been awhile, but in looking at your history and looking at what
13 happened in your past, I get that maybe you didn't know that
14 you were supposed to contact your probation officer within 72
15 hours if you even had contact.

16 The point is that you did have contact, and the point is
17 the criminal history, and you keep making bad decisions. You
18 are 30 years old. It is hard for me to understand how you
19 don't get what your responsibilities are.

20 THE DEFENDANT: As for that, I never had probation
21 before. I have always done my time. This is the first time I
22 had probation and that I was complying with --

23 THE COURT: Let me ask you a question. You get
24 stopped on April 2nd. It is a serious incident. It winds up
25 being more than just getting stopped for traffic. They search

1 and find cocaine. Whether or not you were arrested, you are on
2 supervised release with this Court.

3 You didn't think to look at your paperwork and say oh, my
4 God, maybe I should call my probation officer, this is serious?
5 You didn't think of doing that?

6 THE DEFENDANT: Honestly, I didn't. I didn't even
7 know I had a warrant.

8 THE COURT: It is not a question of having a warrant.
9 It is a question of oh, my gosh, I got in trouble with the
10 police department, and I am on probation.

11 You didn't think of that?

12 THE DEFENDANT: No, ma'am, I didn't. I didn't -- I am
13 taking a lot of medications, and I just didn't think about it.
14 I was on my way to my house, and my little brother had just
15 passed away like I was telling Marisela Seward about all of
16 that. It is the only thing I can say, ma'am.

17 THE COURT: On behalf of the Government, anything?

18 MS. WINTERS: No, Your Honor.

19 THE COURT: Let's hear from Probation, Ms. Seward?

20 MS. SEWARD: Good afternoon, Your Honor. I apologize
21 that I was having some video issues, technical issues.

22 THE COURT: Did you have anything you wanted to add?

23 MS. SEWARD: No, Your Honor. I just would ask that
24 you would acknowledge the incident that she was involved in and
25 pending matters at this time and consider that in her

1 sentencing.

2 THE COURT: Ms. Cadena, you are here on this motion to
3 revoke that you failed to contact your probation officer. That
4 really is what concerns me here today because, as I said to
5 you, given your criminal history, given all of your past, given
6 your age, and how many times you had run-ins with the law, I
7 would have thought you would have thought this through a little
8 better.

9 Based on the information provided, and your admission, I
10 will find you violated the terms and conditions of supervision,
11 and continuing you on these terms and conditions no longer
12 serves the ends of justice. The Court will grant the motion to
13 revoke supervision.

14 The Court will find a fair and reasonable sentence is a
15 sentence of eight months of incarceration. Once you're done,
16 you are done. I will not place you back.

17 Anything further on behalf of the Government?

18 MS. WINTERS: No, Your Honor. Thank you.

19 THE COURT: On behalf of the Defendant?

20 MR. BENJAMIN: I understand Ms. Cadena has been in
21 custody since December 2nd. That time has not been credited
22 towards any sentence. I didn't know if the Court would
23 entertain or if the Court can provide -- she has been in
24 custody, and the warrant was issued, I believe, on
25 December 2nd. She was not arrested until April.

1 THE COURT: I will give her credit from April
2 [inaudible] from when she was actually arrested.

3 MR. BENJAMIN: Sorry?

4 THE COURT: I will give her credit from
5 April 2nd, 2021, which is when she came into federal custody.

6 MR. BENJAMIN: The Court understands, as of now, no
7 writ has been -- no time has been [inaudible] from [inaudible]
8 December 2nd and the warrant issued until April.

9 THE COURT: Right. I don't have control over what the
10 state --

11 MR. BENJAMIN: I understood, Your Honor. I was trying
12 to refer to the guideline.

13 THE COURT: I [inaudible]?

14 THE DEFENDANT: Is there a way I can go to a halfway
15 or something?

16 THE COURT: Not at this point.

17 Ready on the next case.

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CERTIFICATION

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3 I certify that the foregoing is a correct transcript from
4 the record of proceedings in the above-entitled matter. I
5 further certify that the transcript fees and format comply with
6 those prescribed by the Court and the Judicial Conference of
7 the United States.

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9 Date: July 9, 2021

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/s/ Walter A. Chiriboga, Jr.

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Walter A. Chiriboga, Jr.

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